

## **EXHIBIT 3**

Case Clip(s) Detailed Report


**DB - ePlus v Lawson**

Thursday, January 20, 2011, 7:56:27 AM

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04 Vice-president, general counsel"?  
05 A. I do.  
06 Q. That is you, correct?  
07 A. That is.  
08 Q. Is that your signature in the signature block?

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09 A. It is.  
10 Q. Could you please turn to the next page, page  
11 L0260592?  
12 A. I have it.

### 6. PAGE 9:19 TO 9:25 (RUNNING 00:00:13.166)

19 Q. And you signed this on behalf of Fisher  
20 Scientific?  
21 A. I did.  
22 Q. Were you working for Fisher Scientific that  
23 day that is dated below that, the 26th day of  
24 April 1993?  
25 A. I was.

### 7. PAGE 11:07 TO 11:18 (RUNNING 00:00:30.667)

07 Q. Could you please turn to the next page

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08 L0260593?  
09 A. I have it.  
10 Q. Do you see the bottom of the page where it  
11 says, "Services" and then to the right there  
12 is a paragraph?  
13 A. I do.  
14 Q. Underneath that it says Fisher RIMS?  
15 A. It does.  
16 Q. And then above that you see "Use in Commerce,  
17 August 1992"?  
18 A. Yes.

### 8. PAGE 12:03 TO 12:15 (RUNNING 00:00:33.933)

03 Q. Now you see next to it services it says,  
04 "Computer-based services for processing  
05 requisitions, entering purchase orders,  
06 maintaining inventory records, transferring  
07 related reports and data to other computers  
08 and generating documents for picking, packing,  
09 shipping and receiving requisitioned and  
10 ordered products." Do you see that paragraph?  
11 A. I do.  
12 Q. Was it your understanding that those are the  
13 services that were being used by Fisher RIMS  
14 in August of 1992?  
15 A. It is.

### 9. PAGE 13:08 TO 14:07 (RUNNING 00:01:07.867)

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08 Q. Could you turn to L0260594, the next page.  
09 A. Okay.  
10 Q. Again, do you see on this page where it says,  
11 "Used in Commerce, August 1992"?  
12 A. I see that.  
13 Q. And below it has services and it has a similar  
14 paragraphs talking about those services?

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15 A. Right.  
 16 Q. Is it your understanding that this Fisher RIMS  
 17 mark was being used in Commerce in 1992?  
 18 A. It is.  
 19 Q. Could you please turn to the next page,

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20 L0260595?  
 21 A. I have that.  
 22 Q. What is this document?  
 23 A. It appears to be the cover of a commercial  
 24 brochure entitled Fisher RIMS.  
 25 Q. And you see at the bottom where it says, "A  
 00014:01 revolutionary electronic Requisition and  
 02 Inventory Management System"?  
 03 A. Yes.  
 04 Q. Was it your understanding that the Fisher RIMS  
 05 was a requisition and inventory management  
 06 system?  
 07 A. It was.

## 10. PAGE 14:12 TO 15:10 (RUNNING 00:00:57.933)

12 Q. You see that this page has what looks to be a

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13 series of bullet points describing Fisher  
 14 RIMS?  
 15 A. I see that.  
 16 Q. Do you see the bullet point one says,  
 17 "Consolidates all supplier activity, including  
 18 third-party and administrative purchases"?  
 19 A. I see that.  
 20 Q. Do you see bullet point four that says,  
 21 "Allows flexible remote requisitioning by  
 22 formatted screen, telephone, fax or bar code  
 23 scanning"?  
 24 A. I see that.  
 25 Q. Do you see bullet point it looks like maybe  
 00015:01 bullet point eight. It says,  
 02 "Cross-references your stock numbers and all  
 03 your supplier numbers."  
 04 A. Yes.  
 05 Q. And then bullet point 15, do you see that? It  
 06 says "Utilizes file transfers and EDI"?  
 07 A. I see that.  
 08 Q. And bullet point 17 says, "Utilizes OS/2  
 09 operating system, relational database."  
 10 A. Right.

## 11. PAGE 15:15 TO 15:17 (RUNNING 00:00:08.400)

15 Q. Is it your understanding that the Fisher RIMS  
 16 system had these features?  
 17 A. In general, yes.

## 12. PAGE 15:18 TO 16:02 (RUNNING 00:00:37.800)

18 Q. To the best of your knowledge this document  
 19 starting at page L0260595 to L0260608 -- to  
 20 the best of your knowledge was this document

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21 used in Commerce at the time this application  
 22 was filed?

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23 A. It is the same answer I gave before. To the  
 24 best of my knowledge that would be the case.  
 25 The facts are accurately recorded. If this  
 00016:01 was attached to it, that was the document that  
 02 was in Commerce -- used in Commerce.

## 13. PAGE 16:10 TO 16:12 (RUNNING 00:00:06.738)

10 Q. When you were working at Fisher, did you ever  
 11 work with Fisher on its 10-Ks?  
 12 A. I don't really recall doing that.

## 14. PAGE 16:15 TO 16:24 (RUNNING 00:00:40.933)

15 Q. Can you tell me what a 10-K is?  
 16 A. The 10-K is the annual report that public  
 17 companies are required to file with the  
 18 Securities and Exchange Commission?


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19 Q. Can you please turn to what has been marked as  
 20 Lawson Exhibit No. 42, L0343548 to L0343586.  
 21 A. I have that.  
 22 Q. What is this document?  
 23 A. This is a form 10-K for Fisher Scientific  
 24 International for, I guess, for 1993.

## 15. PAGE 18:02 TO 18:25 (RUNNING 00:00:55.800)

02 Q. Can you turn to the next page, L0343550?

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03 A. I have that.  
 04 Q. The first full paragraph, the one that starts,  
 05 "Computerized order-entry system," do you see  
 06 that paragraph?  
 07 A. I do.  
 08 Q. Do you see where it is says, "Information on  
 09 all 100,000 products offered in the Fisher  
 10 Catalog can be obtained through Fisher RIMS,  
 11 the company's newest and most powerful  
 12 electronic order-entry system, which provides  
 13 paperless purchasing, receiving, billing and  
 14 product distributions." Do you see that  
 15 sentence?  
 16 A. I do.  
 17 Q. Is it your understanding that that is what the  
 18 Fisher RIMS product was?  
 19 A. Yes, it is.  
 20 Q. Do you see the next sentence, it says, "Fisher  
 21 RIMS facilitates just-in-time delivery and  
 22 third-party purchasing, contributing to  
 23 supplier consolidation for its customers"? Is  
 24 it your understanding that that is also true  
 25 of the Fisher RIMS system?

## 16. PAGE 19:13 TO 20:17 (RUNNING 00:01:26.767)

13 Q. Is this paragraph consistent with your  
 14 understanding of the Fisher RIMS system?  
 15 A. It is.  
 16 Q. Is it consistent with your understanding of  
 17 the Fisher RIMS system that was on sale in  
 18 1992?  
 19 A. The Fisher RIMS system that I was aware of,  
 20 yes. I think this is an accurate depiction of  
 21 my understanding of its capabilities.

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14 that doesn't mean that I would credit their  
 15 testimony. You asked me a question about  
 16 whether I would rely on it and I would be  
 17 interested to know what they thought about it  
 18 and they are more expert than I am. I don't  
 19 purport to be an expert on it. I  
 20 authenticated my signature.

## 27. PAGE 34:04 TO 35:11 (RUNNING 00:01:39.854)

04 Q. Are you aware that during your tenure as  
 05 general counsel Fisher Scientific filed for an  
 06 application on the RIMS system?  
 07 A. You mean a patent application or a  
 08 trademark --  
 09 Q. A patent application.  
 10 A. I just do not recall. We filed lots of  
 11 applications for different products and I  
 12 just don't remember that one specifically.  
 13 The lawyer who worked for me was a patent and  
 14 trademark lawyer. He took the laboring for  
 15 all of those things.  
 16 Q. That is Mr. Dornburg, correct?  
 17 A. Alan Dornburg.  
 18 Q. And you are aware that during the time of your  
 19 tenure as general counsel Fisher Scientific  
 20 applied for a patent for an electronic  
 21 sourcing system and method in August of 1994?  
 22 A. I just don't have any recollection of specific  
 23 applications.  
 24 Q. Fair enough. Was the company in the habit of  
 25 filing for patent applications that it thought  
 00035:01 were not new, non-obvious and useful?  
 02 A. You know, that -- I would say phrased that way  
 03 that sounds pretty cynical. I am sure they  
 04 applied for things where they weren't sure it  
 05 would be granted or weren't sure whether they  
 06 would have to narrow their claims at a later  
 07 date and all of those sorts of things but I  
 08 think because of the expense involved there  
 09 would be some expectation that they would  
 10 achieve their goal of getting some kind of  
 11 protection.

## 28. PAGE 35:15 TO 35:24 (RUNNING 00:00:28.663)

15 Q. Were you aware that there were three patents  
 16 granted by the patent office for the  
 17 electronic sourcing system?  
 18 A. I was not.  
 19 Q. Would the company expend resources seeking to  
 20 obtain intellectual property protection for  
 21 inventions that it thought was worthless? Is  
 22 that part of the policy of the company?  
 23 A. Well, I can't speak for others but it doesn't  
 24 make much sense to me.

## 29. PAGE 36:09 TO 41:15 (RUNNING 00:06:16.683)

09 Q. Understood, but as general counsel at the time  
 10 from the -- just focussing on the 1992 to 1996  
 11 period you weren't authorizing Mr. Dornburg to  
 12 file applications for patents at the patent  
 13 office that the company thought had no value,  
 14 correct?  
 15 A. I wasn't, but I don't know if I was involved  
 16 in the patent applications or not since you  
 17 haven't shown me anything with my signature on

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18 it.  
 19 Q. I am not asking you about what you had your  
 20 signature on. As general counsel, was it the  
 21 policy of the company to file applications to  
 22 the patent office that the company thought had  
 23 no value? Yes or no?  
 24 A. I would not have executed such a policy, no.  
 25 Q. I didn't think you would. All right. Let me  
 00037:01 ask you about some of these exhibits if you  
 02 have them in front of you. Let's start out  
 03 with -- first you were asked some questions  
 04 about Exhibit No. 40, which is this trademark

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05 application that bears your signature in  
 06 various places. Do you recall that?  
 07 A. I do.  
 08 Q. Do you have it in front of you?  
 09 A. I do.  
 10 Q. Let's just skip over some of the stuff and go  
 11 right to the brochure. You called it a  
 12 marketing brochure. Do you recall that? That  
 13 starts at page 595 at the bottom right.

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14 A. Okay.  
 15 Q. It is a marketing brochure, correct?  
 16 A. That is what it looks like.  
 17 Q. Is it not a technical document, right, like a  
 18 manual that would help you understand the  
 19 functioning of the Fisher RIMS system,  
 20 correct?  
 21 A. I assume not. It looks like a commercial  
 22 brochure to me.  
 23 Q. For consumption of potential --  
 24 A. Customers.  
 25 Q. -- customers of the RIMS system, correct?  
 00038:01 A. That is my understanding.  
 02 Q. You were asked some questions about some  
 03 bullet points that appear at page -- it ends

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04 with 598. Do you recall that?  
 05 A. I do.  
 06 Q. You have no independent knowledge as to  
 07 whether or not the RIMS system in this period  
 08 of time say in 1992 or so had that  
 09 functionality, correct?  
 10 A. I actually think that it had this genre of  
 11 functionality. That is what it was designed  
 12 to do. It was designed to take over. I know  
 13 what you are asking me but my understanding  
 14 was that the RIMS system was designed to take  
 15 over the inventory storeroom of large  
 16 customers and to manage it from the beginning  
 17 to the end, from purchase to the lab bench for  
 18 the customer and that it needed features like  
 19 these to be effective. I have no specific  
 20 knowledge of each one of these things in  
 21 detail, no.  
 22 Q. Fine. Thank you. You just confirmed for me  
 23 on page 598 the documentation that we are  
 24 looking at with these bullet points Ms. Hughey  
 25 asked you about, there is no mention at all

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00039:01 about catalogs, correct?  
 02 A. There may not have --  
 03 Q. Does the word catalog appear there?  
 04 A. Does the word catalog appear, no, but that is  
 05 what they would be accessing would be the  
 06 catalog system.  
 07 Q. The Fisher Catalog?  
 08 A. I think it was intended to be able to manage  
 09 other items otherwise it wouldn't have been  
 10 able to replace --  
 11 Q. Does it have any discussion of the word  
 12 catalog anywhere on this page, yes or no? Can  
 13 you answer that fairly?  
 14 A. I would have to look. It says, "Consolidates  
 15 all supplier activity including third-party  
 16 and administrative purchases." It doesn't  
 17 have the word catalog, but that is my  
 18 understanding.  
 19 Q. Fair enough. How many iterations did the  
 20 Fisher RIMS system go through?  
 21 A. I don't know.  
 22 Q. The inventors say it went through many  
 23 iterations. Do you know any of the trade  
 24 names that the iterations went through?  
 25 A. I don't know.  
 00040:01 Q. Do you know how the features and functionality  
 02 changed during the period of time from 1992 to  
 03 1995, for example?  
 04 A. I do not.  
 05 Q. Let's focus on Exhibit No. 43 for a moment if

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06 we could. That was the annual report that you  
 07 said you had no responsibility for?  
 08 A. Right. I have it.  
 09 Q. The page that ends with the page No. 589?

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10 A. Okay. I have it.  
 11 Q. You were asked about this entry italicized  
 12 "Computer order-entry system," do you see  
 13 that?  
 14 A. I do.  
 15 Q. Can you tell me where in this paragraph it  
 16 discusses the capabilities searching multiple  
 17 vendor catalogs?  
 18 A. I don't see it there.  
 19 Q. Fair enough. Next paragraph, the Fisher  
 20 Catalog. Is there any other catalog other  
 21 than the Fisher Catalog mentioned in that  
 22 paragraph?  
 23 A. The paragraph is entitled "The Fisher  
 24 Catalog," so, no.  
 25 Q. Fair enough. Is it Exhibit No. 42 was also an

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00041:01 annual report. I took these out of order.  
 02 A. That is okay. I have it.  
 03 Q. The page that ends 550.

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04 A. I have it.  
 05 Q. Computerized order-entry systems. The only